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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/774,962	01/31/2001	Jim McCollum	826	6020

7590

12/03/2002

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EXAMINER

BOTTORFF, CHRISTOPHER

ART UNIT

PAPER NUMBER

3618

DATE MAILED: 12/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/774,962

Applicant(s)

MCCOLLUM ET AL.

Examiner

Christopher Bottorff

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The amendment filed September 16, 2002 has been entered. Claims 1-8 are pending.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Allen US 5, 845,780.

Allen discloses a wheeled, portable, collapsible athletic equipment carrier 10. See figures 1-3. The carrier includes a two-wheeled cart (note the handle and wheel arrangement depicted in figures 1 and 3) and an athletic bag . The bag has a generally vertically elongated configuration fabricated of a fabric that is heavy, flexible, and weatherproof.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen US 5,845,780 in view of Weldon US 6,386,557.

The cart of Allen does not have the structure defined in claims 2, 3, 5 and 7. However, Weldon teaches that such a cart, used for carrying athletic equipment, was old and well known in the art at the time the invention was made. See figures 1-3. Weldon's cart includes a main frame 10 with anterior and posterior ends, a base member 16 formed in a U-shape of hollow tubes, a support stand 17 affixed to the base member and formed in a U-shape of an elongated hollow tube, a handle 30 pivotally mounted to the sidewalls of the main frame and formed in a U-shape of a hollow tube, and a mounting platform 15 that serves as a base upon which athletic equipment can be permanently attached. Note that two wheels are clearly shown by Weldon.

Providing the bag of Allen on a cart of the structure disclosed by Weldon, rather than the unsubstantial wheel and handle arrangement of Allen, would have been obvious to one of ordinary skill in the art at the time the invention was made. This modification would provide a sturdy base of support for the bag and allow the apparatus to be transported over difficult terrain, such as an uneven and grassy/muddy field.

### ***Claim Rejections - 35 USC § 103***

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Allen US 5,845,780 in view of Green US 5,951,075.

Allen does not disclose an inflating pump attached to the equipment carrier. However Green teaches that inflating pumps are old and well known pieces of athletic

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equipment that are commonly carried with athletic equipment carriers. See column 6, lines 24-26. From the teaching of Green, attaching a pump to the carrier of Allen would have been obvious to one of ordinary skill in the art at the time the invention was made in order to service the other athletic equipment.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Allen US 5,845,780 in view of Pratt et al. US 6,357,586.

Allen also does not disclose ball-receiving cylinders attached to the front side of the bag. However, Pratt et al. teaches that the practice of attaching a ball-receiving cylinder 10 to the front side of an athletic bag was old and well known in the art at the time the invention was made. See figure 6. Providing the bag of Allen with a ball-receiving cylinder would have been obvious to one of ordinary skill in the art at the time the invention was made in order to hold balls that are used with the athletic equipment in the bag.

Furthermore, providing the cylinder with a specific diameter to accommodate a specific ball represents an obvious design choice that was within the purview of one of ordinary skill in the art at the time the invention was made. Also, providing a pair of cylinders represents an obvious duplication of parts.

### ***Response to Arguments***

Applicant's arguments filed September 16, 2002 have been fully considered but they are not persuasive.

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In regard to the rejection of claims 1 and 6 under 35 U.S.C. 102(b) as being anticipated by Allen, applicant asserts on page 6 of the remarks that the present claims distinguish over Allen in that Allen does not *claim* an athletic bag incorporating a two wheeled cart or a weatherproof, flexible, heavy fabric. However, the teachings of Allen are not derived from the claims alone, but rather from the full disclosure. It is well settled that a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art. *Merck & Co. v. Biocraft Laboratories*, 10 USPQ2d 1843 (Fed. Cir.), *cert denied*, 493 U.S. 975 (1989). See also *Celeritas Technologies Ltd. V. Rockwell International Corp.* 47 USPQ2d 1516, 1522-23 (Fed. Cir. 1998).

Allen discloses a bag structure including a handle 28 and wheels, wherein the bag has sufficient structure to allow an operator to pull the bag by the handle and move it with the assistance of the wheels. In this capacity, the full structure of the bag serves as a cart. In addition, Allen depicts a wheel assembly on the right side of the bag in figure 1 and another wheel assembly on the left side of the bag in figure 3. This sufficiently suggests two wheels.

Furthermore, the common fabric disclosed by Allen is inherently flexible, has weight, and provides the interior of the bag protection from the weather. Applicant's disclosure does not define a threshold beyond which a fabric becomes "heavy" or is "weatherproof." Thus, the inherent nature of common fabric satisfies the weatherproof, flexible, and heavy standard of the claims.

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Applicant also contests the rejection of claims 2-5, 7, and 8 under 35 U.S.C. 103(a). In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

On page 7 of the remarks Applicant asserts that Weldon does not disclose an athletic bag with a bottom end permanently attached to the base member of the main frame. Allen discloses the athletic bag as discussed above, and when an athletic bag, as taught by Allen, is combined with a cart structure, as taught by Weldon, the claimed invention would result.

Applicant further notes that the references fail to disclose the attachment of an inflating pump. The examiner has interpreted this to be a challenge to the official notice taken in the office action mailed June 11, 2002. Accordingly, a reference, Green US 5,951,075, has been provided to demonstrate the common nature of this feature.

In regard to the combination of Allen and Pratt et al., Applicant contends that this combination has not been properly suggested by the references and the combination was based upon hindsight reasoning. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir.

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1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the disclosure of Pratt et al. suggests that the convenience of an attachment that accommodates balls is a beneficial feature. This benefit is sufficient to suggest the cited combination. Incidentally, Weldon also suggests that an athletic equipment carrier will benefit from a well structured cart in that heavy equipment may be carried. This is also sufficient to suggest the cited combination.

Moreover, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Holtz, Harling, Ingalls, and Marques et al. disclose various cart configurations. Vienneau, Hamblin, Lin, and Lawson disclose various equipment carriers.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within



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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Bottorff whose telephone number is (703) 308-2183. The examiner can normally be reached on Mon.-Fri. 7:30 a.m. - 4:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson can be reached on (703) 308-0885. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



Christopher Bottorff  
November 18, 2002

FRANK VANAMAN  
PRIMARY EXAMINER

  
11/27/02